

his driving experience in the military is sufficient to overcome the information listed on his driver's abstract. The appellant adds that he served in the infantry and he earned an Expert Infantryman badge. In this regard, his infantry duties included dealing with potentially hostile individuals on a daily basis and securing locations in hostile environments. The appellant states that he continues to serve in the Army National Guard and he possesses expert level qualifications for the use of his weapon. He maintains that the tactical and technical experience that he gained in the military can be directly applied to the position of Police Officer.

Additionally, the appellant asserts that he obtained federal clearance to work at a top secret site while serving in the military. He adds that he was issued two handgun permits from the jurisdiction of South Plainfield which required him to pass a background check. As such, he maintains that he should have been able to pass a municipal background check. The appellant adds that his juvenile record should not have been considered as it was an isolated incident. Moreover, the appellant contends that he now has respect for law enforcement employees. As such, he requests his name be restored to the list.

In response, the appointing authority maintains that the appellant's name should be removed from the eligible list based on his unsatisfactory driving record and background report. No additional arguments were provided in response to the instant appeal.

It is noted that the appellant's driving record reflects that he was charged on August 22, 2015 with Driving While Suspended-parking ticket; on December 31, 2012 and March 16, 2009 with Speeding; on October 19, 2012 with Delaying Traffic; on February 7, 2011 with Failure to Comply with Court order; on December 10, 2010 with Operating Under the Influence and being Involved in an Accident; on December 10, 2010 and July 2, 2010 with Careless Driving; on March 14, 2009 with Improper Display/Fictitious plates; and on February 22, 2009 with Unsafe Operation of a Motor Vehicle. It also indicated five entries for Failure to Appear in Court between May 2010 and June 2013; nine entries for Non-Payment of Insurance Surcharges between March 2009 and August 2015; four entries for persistent violator between December 2010 and April 2014; and that his license was suspended on nine occasions between April 2009 and August 2015.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)(4), provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. See *Tharpe, v. City of Newark Police*

Department, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Civil Service Commission (Commission) must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)(4) to determine whether the appellant's criminal history adversely relate to the position of Police Officer. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commission. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, *supra*.

It is well established that municipal police departments may maintain records pertaining to juvenile arrests, provided that they are available only to other law enforcement and related agencies, because such records are necessary to the proper and effective functioning of a police department. *Dugan v. Police Department, City of Camden*, 112 *N.J. Super.* 482 (App. Div. 1970), *cert. denied*, 58 *N.J.* 436 (1971). Thus, the appellant's juvenile arrest records were properly disclosed to the appointing authority, when requested for purposes of making a hiring decision. While an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. See *In the Matter of Tracey Shimonis*, Docket No. A-3963-01T3 (App. Div. October 9, 2003).

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket

No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998); *In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003). *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, the appellant argues that his juvenile arrest should not now be considered and he has been rehabilitated as he has served in the military. Although the appellant was a juvenile when he was charged with the incidents on June 8, 2006, the appellant's juvenile offense may be considered if the offense adversely relates to the employment sought. Additionally, the record also reflects that he was charged in December 2010 with Driving Under the Influence.

The appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a law enforcement officer. The appellant's driving record indicates that his driver's license was suspended on nine occasions. His driving record also indicates numerous violations of the motor vehicle laws of New Jersey. In that regard, his complete driving record is considered for this matter. Furthermore, the last suspension occurred less than 10 years before he applied for the subject examination. Although the appellant states that he has not been involved with any other moving violations since 2013, it cannot be ignored that the last time his license was suspended was in August 2015. The driving abstract also indicates several entries for non-payment of insurance surcharges. While some of the incidents happened several years ago, it is clear that the violations were not limited to just one isolated incident. The public expects Police Officers to present a personal background that exhibits respect for the law and rules. Such infractions show a pattern of disregard for the motor vehicle laws and rules and questionable judgment on the appellant's part. Such qualities are unacceptable for an individual seeking a law enforcement position.

Moreover, while the appellant has presented some evidence of his rehabilitation and states that he served in the military and continues to serve in the Army National Guard, and it is commendable that he showed some progress in changing his life for the better, his evidence of rehabilitation cannot overcome his currently unsatisfactory record. Further, the nature of the arrests as well as his driving record clearly adversely relates to the title of Police Officer. In this regard, it is recognized that Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117

N.J. 567 (1990). Moreover, the fact that the appellant passed background investigations on the federal level does not establish his contentions or change the outcome of this matter, as the appointing authority is entitled to rely on its own background investigation to assist it with determining the suitability of the candidates prior to making appointments. Therefore, it is clear from the record that the appellant's driving record reflects on the appellant's character and his suitability for the position at issue.

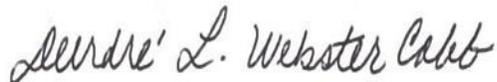
Accordingly, given the position at issue and in consideration of the totality of the evidence in the record, the appointing authority has presented a sufficient basis to remove the appellant's name from the eligible list for Police Officer (S9999U), South Plainfield.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF APRIL, 2018



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